

§ 58-58-245. Disclosure.

(a) With each application for a viatical settlement, the provider or broker shall provide the viator with at least the following disclosures no later than the time the application for the contract is signed by all parties. The disclosures shall be provided in a separate document that is signed by the viator and the provider or broker and shall provide the following information:

- (1) There are possible alternatives to contracts including any accelerated death benefits or policy loans offered under the viator's policy.
- (2) Some or all of the proceeds of the viatical settlement may be taxable under federal income tax and state franchise and income taxes, and assistance should be sought from a professional tax advisor.
- (3) Proceeds of the viatical settlement could be subject to the claims of creditors.
- (4) Receipt of the proceeds of a viatical settlement may adversely affect the viator's eligibility for Medicaid or other government benefits or entitlements, and advice should be obtained from the appropriate government agencies.
- (5) The viator has the right to rescind a contract for 10 business days after the receipt of the viatical settlement proceeds by the viator, as provided in G.S. 58-58-250(h). If the insured dies during the rescission period, the settlement contract shall be deemed to have been rescinded, subject to repayment of all viatical settlement proceeds and any premiums, loans, and loan interest to the provider or purchaser.
- (6) Funds will be sent to the viator within three business days after the provider has received the insurer or group administrator's acknowledgment that ownership of the policy or interest in the certificate has been transferred and the beneficiary has been designated.
- (7) Entering into a contract may cause other rights or benefits, including conversion rights and waiver of premium benefits that may exist under the policy, to be forfeited by the viator. Assistance should be sought from a financial adviser.
- (8) Disclosure to a viator shall include distribution of a brochure describing the process of viatical settlements. The NAIC's form for the brochure shall be used unless the Commissioner develops one.
- (9) The disclosure document shall contain the following language: "All medical, financial, or personal information solicited or obtained by a provider or broker about an insured, including the insured's identity or the identity of family members, a spouse or a significant other may be disclosed as necessary to effect the viatical settlement between the viator and the provider. If you are asked to provide this information, you will be asked to consent to the disclosure. The information may be provided to someone who buys the policy or provides funds for the purchase. You may be asked to renew your permission to share information every two years."
- (10) The insured may be contacted by either the provider or broker or its authorized representative for the purpose of determining the insured's health status. This contact is limited to once every three months if the insured has a life expectancy of more than one year, and no more than once per month if the insured has a life expectancy of one year or less.

(b) A provider shall provide the viator with at least the following disclosures no later than the date the contract is signed by all parties. The disclosures shall be conspicuously

displayed in the contract or in a separate document signed by the viator and the provider or broker, and provide the following information:

- (1) State the affiliation, if any, between the provider and the issuer of the insurance policy to be viaticated.
 - (2) The document shall include the name, address, and telephone number of the provider.
 - (3) A broker shall disclose to a prospective viator the amount and method of calculating the broker's compensation. The term "compensation" includes anything of value paid or given to a broker for the placement of a policy.
 - (4) If an insurance policy to be viaticated has been issued as a joint policy or involves family riders or any coverage of a life other than the insured under the policy to be viaticated, the viator shall be informed of the possible loss of coverage on the other lives under the policy and shall be advised to consult with his or her insurance producer or the insurer issuing the policy for advice on the proposed viatical settlement.
 - (5) State the dollar amount of the current death benefit payable to the provider under the policy. If known, the provider shall also disclose the availability of any additional guaranteed insurance benefits, the dollar amount of any accidental death and dismemberment benefits under the policy, and the provider's interest in those benefits.
 - (6) State the name, business address, and telephone number of the independent third-party escrow agent and the fact that the viator or owner may inspect or receive copies of the relevant escrow or trust agreements or documents.
- (c) If the provider transfers ownership or changes the beneficiary of the insurance policy, the provider shall communicate the change in ownership or beneficiary to the insured within 20 days after the change. (2001-436, s. 3.)